

53. It is precisely to overcome the problem of under-reporting that regulators should look to reconciled data in the first place. Yet, the TPUC has offered no reason to think that SWBT's under-reporting is unique to AT&T and Nextlink. Indeed, the evidence concerning the root cause of this under-reporting shows that it is not CLEC-specific, but is due to deficiencies in SWBT's internal data collection and reporting processes that are common to all CLECs. See DeYoung/Van de Water Supp. Decl., ¶¶79-84. Indeed, as discussed further below, SWBT's responses to AT&T's "action list" of improvements in data collection and reporting tacitly concede the need for improvement. See, infra, Section II.A. For this reason, SWBT's self-reported data on early cuts (PM 114) must be presumed to under-report the actual incidence of premature disconnect outages.²³

54. Thus, the first methodological departure on outages is that the TPUC backs out the outages due to premature disconnects, offers no valid reason for doing so, and then gives the impression that it has put the premature disconnects back into the analysis when, in reality, it has not done so.

b. The SOAC/RCMAC Problem

55. The third step that the TPUC took to reach an outage rate of 1.68 percent for CHC cutovers was to exclude the outages on the XXX orders/XXX lines that resulted in February from a software problem in SWBT's systems. The TPUC exaggerates the impact of this exclusion by reporting the results in terms of lines, rather than orders; as AT&T has previously shown, excluding the SOAC/RCMAC outages alone does not bring SWBT's performance for CHC or FDT into compliance when SWBT's performance is measured by orders. DeYoung/Van

²³ Indeed, the TPUC further obscures the problem by reporting only the all-CLEC PM 114 data, rather than separately breaking out the reconciled-CLEC data separately, as it did for PM 114.1. Had it done so, the breakout for reconciled CLEC data alone likely would show a significant difference in the rate of early disconnects.

de Water Supp. Aff. ¶ 23 & n.8. Nevertheless, any exclusion of these SOAC/RCMAC outages, whether by lines or orders, is inappropriate.

56. The TPUC relied on new, then unreconciled March data (p.18) to show that SWBT has repaired the particular systems problem that caused these outages. Even if this particular problem did not recur in March, however, that fact alone would be insufficient to relieve SWBT from responsibility for causing these outages in February. The crucial issue for purposes of section 271 is not merely whether a particular systems problem has been fixed, but whether the BOC has shown that its systems and performance have stabilized and can be depended upon to support broad-based, meaningful competition.

57. A BOC applicant can always claim that it had “fixed” whatever problem had led to the discriminatory performance that immediately preceded its application. That is why, to show nondiscriminatory performance, SWBT needs to demonstrate that it can provide non-discriminatory access, free of any such systems errors, for at least three consecutive months. From that perspective, the SOAC/RCMAC breakdown is important not as one-time technical problem, but as an illustration of a corporate culture at SWBT that is insensitive to its 271 obligations.²⁴

58. For example, throughout this application process, SWBT has repeatedly tried to explain away violations of its duty to provide CLECs with nondiscriminatory access to SWBT’s unbundled network elements by asserting that no “systemic” problem has been identified. See, e.g., Dysart Aff. ¶¶ 146, 281, 304, 351, 358, 389 (examples of “no systemic problem” conclusion); ¶ 331 (“results are expected to improve”); ¶ 410 (“no reason to expect this measure

²⁴ AT&T is not alone in its frustration with SWBT’s failure to institutionalize a concern for its 271 obligations. As NEXTLINK has complained, “SWBT continues to promote an internal corporate policy designed to prevent normal interaction between our companies on certain key business matters. . . .” See Krabill Aff., ¶16; see also id. at ¶¶11-13.

to be out of parity in the future”); see also Pfau/DeYoung Decl., ¶74. While SWBT can and should fix these problems as they arise, the fact that they continue to recur month after month shows that SWBT has not yet established stable and reliable systems, training, and change management procedures such that it can consistently deliver parity or benchmark performance. See Pfau/DeYoung Aff., ¶¶93-94, 95; see also Attachment 1 of Reply Affidavit of C. Michael Pfau.

59. It is particularly important to require SWBT to demonstrate sustained compliant performance for UNE-L. While the RCMAC/SOAC problem may have been a one-time systems problem limited to February, SWBT’s hot cut performance continues to be plagued by *other* problems that SWBT will also claim are one-time occurrences.

60. One recent example involves SWBT’s failure to notify CLECs of SWBT’s change from the ALI to ALISA 911 database. As set forth below, this was done not only without notice to CLECs, but without any advanced planning to minimize the impact on CLECs. As a result, AT&T’s entry into the XXX market was delayed XXX weeks and entry into the XXX market was delayed for XXX weeks.

61. In late March or early April, AT&T was attempting to install two new switches – one in XXX and one in XXX. When AT&T placed orders for trunks for these switches, however, SWBT responded that it would not activate the trunks groups after installation until the switches had been 911-certified. This was the first time that AT&T – which had previously installed other switches in Texas – became aware of such a policy (which, to the best of AT&T’s knowledge, SWBT has never included in its documentation). SWBT’s position put AT&T in a “Catch-22” situation, because AT&T could not certify the switch until it passed 911 tests, but AT&T could not initiate 911 tests without passing 911 calls over the trunks. Only after AT&T

escalated the issue did SWBT agree to turn up one trunk for each switch, to make certification of the switches possible.²⁵

62. It is unclear at this point whether SWBT's policy applies only to the XXX and XXX switches in question. Although SWBT orally promised to turn up one trunk for any switch that AT&T wished to install in the future, SWBT has not put that commitment in writing.

63. AT&T has encountered additional barriers in trying to provision 911 services in XXX and XXX. First, SWBT – without prior notice to AT&T – changed the database for end-user location information to be sent to the Public Safety Administration Point (PSAP). AT&T learned of this change only after it had loaded customer information into the preexisting database (ALI), its codes did not work in testing, and SWBT's systems nonetheless advised AT&T that no trouble had been found. After additional prodding, SWBT advised AT&T of the change in databases. SWBT stated that, due to the change, AT&T would be required to delete its records from ALI and re-load them into ALISA, the new database. The ensuing deletion and re-loading was a time-consuming process that caused delay, both in the certification of the switches and in AT&T's market entry.

64. Second, SWBT failed to inform AT&T that SWBT had been replaced as the database vendor for one of the suburbs that will be served by AT&T's XXX switch – XXX. AT&T learned of this fact only after it continued to fail 911 testing procedures to locations in XXX because the PSAP was unable to view the data for those locations, even though AT&T was

²⁵ Additional obstacles to competition erected by SWBT pertaining to 911 services in Texas are described in the comments filed by MCI WorldCom and Global Crossing on SWBT's first Section 271 application for Texas. See MCI WorldCom Comments, filed January 31, 2000, at 62-63 and Tab F (Emergency Petition of Advisory Commission on State Emergency Communications ("ACSEC") for Declaratory Ruling, Texas PUC Docket No. 20334, filed Jan. 15, 1999), Tab G (ACSEC List of Issues, Texas PUC Docket No. 20856, filed Aug. 25, 1999), and Tab H (SCC List of Issues, Texas PUC Docket No. 20856, filed Aug. 10, 1999); Global Crossing Comments, filed January 28, 2000, at 2-3, 4-5, and Larson Aff., ¶¶ 8-10.

passing such data through the XXX switch to the PSAP. Only after AT&T issued multiple trouble tickets to SWBT did SWBT finally advise AT&T that it no longer provided 911 database services for XXX. In addition, AT&T encountered a classic runaround in its attempts to correct the problem and re-load the data. AT&T was advised by SWBT to contact the new vendor and conduct testing with that vendor – only to be told by the new vendor that AT&T should contact SWBT because the transition was to occur the following week. Only when AT&T again contacted SWBT did SWBT finally agree to load the information.

65. In the case of both the XXX and XXX switches, SWBT has also failed to perform in a timely manner the “action items” that must be implemented to ensure that its systems will recognize AT&T’s codes, and that calls will be routed over the PSAP. Instead, SWBT has taken an inordinately long time to complete them. For example, when AT&T encountered problems with the ALI database in the XXX switch (as a result of SWBT’s unannounced change to the ALISA database), SWBT did not proactively attempt to resolve the same problems in AT&T’s Austin switch, even though SWBT was aware that AT&T was activating both switches. Prompt action was particularly necessary because the XXX switch was a different type of switch (Nortel DMS) from the XXX switch (Lucent 5ESS), and therefore presented a far different set of circumstances – as SWBT probably knew, since it uses Nortel DMS switches in its own network.

66. Instead, SWBT did not begin to address the ALI/ALISA problems in connection with the XXX switch until AT&T actually encountered the problems in that switch. SWBT then advised AT&T that it could not develop an action plan until the third-party vendor (Lucent Technologies) first confirmed the steps that were necessary to correct the problem. SWBT then took at least four business days to develop an action plan. This process was unreasonably

lengthy, particularly since it seems unlikely that Lucent – which created ALISA – needed four business days to provide the confirmation which SWBT purportedly required.

67. While both the XXX and XXX switches have been certified, the certification process was extraordinarily lengthy. As a result of SWBT's initial failure to activate trunks for these switches, and SWBT's failure to advise AT&T of the change in databases and the change in vendor, AT&T's market entry has been delayed by XXX weeks in XXX, and by XXX weeks in XXX.

68. Even with the certification of the XXX switch, many of the problems that AT&T has encountered are likely to continue as AT&T attempts to install additional switches in Texas. For example, SWBT has failed to establish a process for advising CLECs of a change in the applicable database or database vendor – making it impossible for the CLECs to ensure a smooth transition.

69. It may be that SWBT's failure to anticipate the impact of CLECs of changing 911 databases, like SWBT's failure to anticipate the impact on CLECs of its RCMAC/SOAC systems upgrade, will not recur. Indeed, we fully expect that SWBT will promise to never forget to inform CLECs of a change in 911 databases again. But for 271 purposes, these promises should be deemed beside the point. We believe SWBT needs prove to CLECs and to regulators that it can deal proactively with the system changes that are inevitable in such a way as to deliver, consistently, nondiscriminatory performance. It has not done so.

70. Another reason not to overlook the RCMAC/SOAC-caused outages is that AT&T's most recent data, for FDT orders in early May, shows that SWBT's outage rate has spiked up yet again. For example, on May 2, 2000, SWBT caused outages on XXX of the XXX FDT orders it provisioned for AT&T, for an outage rate of 41.7 percent. We hasten to note that

we have not yet had an opportunity to reconcile our May outage data with SWBT, so these results are preliminary only. But based on our experience over the last nine months, we are confident that the final reconciled numbers will show a significant jump in outages. The cause for this is unknown at this time. But even if the cause turns out to be yet another “one-time” systems or training problem that SWBT agrees to fix, our fundamental point will remain: there is simply no basis, at this stage, to excuse any SWBT-caused outages from the calculation of SWBT’s outage rate.

71. Indeed, SWBT’s May performance is demonstrating quite well how problems that were supposedly resolved nevertheless continue to recur. Despite serious performance problems on FDT in May, simply moving back to CHC is also not viable given demonstrated capacity constraints. In May, SWBT once again began issuing improper rejections of AT&T’s CHC orders when SWBT is unable to confirm the specific hot cut due date and time AT&T requested, notwithstanding the fact that AT&T has been requesting the standard interval. Under such circumstances, SWBT is not supposed to reject the order, but rather assign the next available frame time. SWBT had gotten into the practice of issuing such improper rejections last year, but promised to stop the practice after AT&T’s complaints. See UNE-Loop Decl., ¶45 and nn. 28-31; see also June 30, 1999 Letter from Ms. De Young to Mr. Young, SWBT’s Executive Director, AT&T Account Team (Attachment 10 hereto) and July 6, 1999 Letter from SWBT’s Mr. Hughes to Ms. DeYoung (Attachment 11 hereto). When SWBT does this, it benefits, of course, by not having the failure to meet the requested time count against it in the Performance Measures, which is why such rejections are so improper. Furthermore, the very fact that SWBT is unable to meet the requested due dates is direct evidence of the palpable capacity constraints of the CHC process. Finally, this incident is compelling evidence of the fact that a problem that

was supposedly resolved can easily crop up again, making it important for the Commission to always hold a BOC accountable for the full spectrum of provisioning troubles it causes.

c. Lines versus Orders

72. The second “refinement” in the TPUC’s outages presentation is its decision to report SWBT’s results exclusively in terms of lines, rather than in terms of orders, as Bell Atlantic’s performance was reported. Three points are significant here: (1) there is no reason to ignore all mention of orders; (2) orders is the preferable basis for analysis; and (3) if lines are to be used, then a different performance standard must also be used in order to permit a fair comparison to Bell Atlantic’s order-based standard. Each of these is discussed below.

73. First, the TPUC should not have ignored the PPIG evidence that is reported on an order basis. The latter is directly comparable to the evidence considered in BA-NY. As the NYPSC has made clear, its “outages are computed on a per order basis.” Brief of Intervenor-Appellee Public Service Commission of the State of New York to the United States Court of Appeals for the District of Columbia Circuit, Nos. 99-1538 and 99-1540, p.13 (citing Rubino Aff., ¶¶12-16 (defining outages on a per order basis)). The order-based PPIG data thus permits a direct evaluation of how SWBT’s performance compares to the Bell Atlantic performance that was deemed minimally acceptable. Such a comparison is obviously important in its own right, regardless of what other analysis on the basis of lines might be made.

74. Second, neither reason advanced by the TPUC for measuring on the basis of lines is persuasive. The TPUC initially claims that it “worked diligently with SWBT and CLECs to develop performance measurements that work in Texas . . .” TPUC Comments at 3. Nevertheless, the fact is that the TPUC failed to develop any performance measurement that covers all outages, whether reported on the basis of lines or orders. This therefore is not a case of a state commission preferring to rely on an alternative performance measure that

demonstrably captures the equivalent of what this Commission looked at. Instead, this is a case where the state commission is altering the results of the parties' reconciliation that was designed to fill a gap in the state's performance measures, and that also reports the data on terms directly comparable to the BA-NY Order.

75. The TPUC also claims that "Texas is not New York, and performance measurements are not necessarily 'one size fits all.'" Id. While the non-identity of Texas and New York cannot be gainsaid, the question is whether the difference matters. For this purpose, it plainly does not. No business customer is indifferent to a service outage. Specifically, the TPUC has put forth no evidence that business customers in Texas accept the loss of service on their telephone lines more readily and happily than do business customers in New York. Indeed, the only evidence in the record is that business customers in Texas are furious with these outages and have blamed CLECs for them. See, e.g., DeYoung Aff. ¶¶ 99-102 & Att. 14-16.

76. The TPUC then offers a hypothetical example (p.12) to illustrate why measurement by lines is superior to orders. But this hypothetical is based on unrepresentative facts and does not explain why the Commission and the NYPSC erred in considering measurement by orders. The TPUC states (id.) that "loops more accurately reflect customers' dissatisfaction when their service is provisioned poorly (i.e. customers will likely be more upset if they suffer an outage of 9 lines out of a 10 line order versus 1 line out of a 10 line order)." To be sure, customers are likely to be even more upset in the former situation. But that does not mean that customers are at all "satisfied" when their orders are only partially as opposed to completely filled without incident. Business customers will be dissatisfied even if only one of their lines suffers an outage because their business will be adversely affected. Indeed, customers demand service that is trouble-free, at least as compared to what the incumbent provides. Their

experience with and opinion of a new entrant will be unsatisfactory even if their switch is only partly successful. That is why the parties and the state commission in New York performed the measurement based on orders. There is nothing different about Texas in this regard. See UNE-Loop Decl., ¶¶99-101 and Attach. 14, 15, and 16.

77. In addition, the TPUC's hypothetical is based on factual assumptions that do not correspond to real-world experience. Ten line orders are rare; for most customers it is more economical to purchase a T-1 line than to purchase 10 or more individual loops. The reconciled data show that AT&T's orders average XXX loops per order. See DeYoung/Van De Water Supp. Aff. ¶ 106. Thus, if XXX is provisioned poorly on AT&T's order, the customer has typically lost service on at least XXX of only XXX lines. As a practical matter, this usually means that either the customer's XXX or the customer's XXX is out. Either way, these small-business customers, who are typically very dependent on having all of their lines in good working order, are going to be very dissatisfied. See, e.g. AT&T 3/6 Hot Cut Ex Parte, pp.6-7. Small and medium size business customers have just the number of lines they need; they cannot afford to do otherwise. So, for example, AT&T has recently dealt with a small business customer who depends on received phoned-in solicitations for contractors to bids on millworking jobs, who lost service on one of four lines and ended up nearly out business for the 2 day duration of the outage. Like many business customers, this millworks has a main line they advertise, from which a hunting sequence of other lines is accessed, e.g. an incoming call on the main line rolls over to other lines when the main line is busy. Since the one line that went down was the main line, no calls could be received on any line, and it was if the business had entirely lost service.

78. Ironically, the TPUC conceded the logic of order-based analysis in its Reply Comments on SWBT's initial application. There, the TPUC suggested that although missing one loop in a 23-loop order might not disrupt normal business functions, missing one loop on a three-line order means "the customer is more likely to suffer immediate consequences." TPUC Reply Comments 9 n.13. Because XXX line orders are the average for AT&T, and because even SWBT's data suggest that AT&T's averages are representative,²⁶ the TPUC has failed to put forth any evidence to support its hypothetical about lines-based measures being a more accurate gauge of customer satisfaction.

79. Third, the TPUC has made no effort to defend its assumption that the same standard of performance that this Commission used for orders is appropriate to use for lines. For example, although the TPUC acknowledges (at 12) that "AT&T does not agree that the same benchmarks should apply to both loops and orders," the TPUC does not offer any justification or explanation for why it nevertheless proceeds to use, for measuring outages on lines, the same "fewer-than-5-percent" benchmark that this Commission established for orders.

80. The facts – overlooked by the TPUC – show that in December and February (the two months in which AT&T submitted appreciable numbers of CHC orders), measuring the CHC outage percentage by lines results in a lower outage rate than measuring by orders. Specifically, for December, SWBT caused outages on 3.8% of AT&T's CHC orders, but only 2.8% if measured by lines; similarly, for February, SWBT's outage rate was 27% for CHC orders, but only 17.4% for lines, and there were no CHC outages (on a base of XXX CHC orders) in January. Thus, this evidence shows that measuring CHC outages by lines overstates

²⁶ See UNE-Loop Decl., ¶146; Dysart Aff., ¶ 653.

SWBT's performance as compared to measuring by orders.²⁷ Given these facts, there is simply no factual basis to support the TPUC's unexplained conclusion that a "fewer than 5 percent" standard is appropriate for loops as well as for orders.

d. Outages Lasting Fewer Than 60 Minutes

81. Finally, the TPUC purports to make a fourth adjustment to the reconciled CHC outage data. As discussed below, however, this adjustment affects only FDT outages, not CHC. Moreover, its impact on FDT is negligible.

82. In explaining the refinements made to the reconciled AT&T/SWBT outages data, the TPUC claims (p. 17) that the "following chart" (which show CHC outages of 1.68%) "does not contain outages that occurred within the first sixty minutes of the cut." Id. The TPUC explains that this adjustment is appropriate in light of the 60 minute interval for completing hot cut orders of fewer than 10 loops applicable in New York. Id. Later in its comments, the TPUC notes that the same adjustment was made to the FDT outages chart. Id. at 21.

83. The TPUC's reference to this adjustment in connection with CHC outages is a non-sequitur. Under PM 114.1, SBC is allowed 60 minutes for a cutover of a CHC order up to 10 loops. Accordingly, the PPIG did not count any outage of fewer than 60 minutes as an outage in reporting outage results for CHC. Thus, no such outages were included in the CHC reconciled data in the first place, and hence no adjustments could properly have been made by SBC.

84. As for FDT, the PPIG did include those outages on FDT orders of 10 or fewer loops that lasted between 30 and 60 minutes. This reflects the recognition, by both SWBT's representatives and AT&T's, that with FDT, a thirty minute interval provides sufficient time to

²⁷ Indeed, it is only possible for the loop-based measure to be higher than the order-based measure in the circumstance where a BOC "misses" all of the loops on many large volume orders, but correctly provisioned most loops on many small volume orders. See DeYoung/Van de Water Decl., ¶108 and n.43.

complete the necessary tasks, and the importance of completing the cut in a timely manner because the uncoordinated nature of the FDT process means that delayed cuts will result in prolonged outages.. According to Ms. Conway's own description of the FDT process to this Commission, "[t]he CLEC should inform the customer that work will be performed on their line within a 30-minute window of the FDT." Conway Aff., ¶86. Indeed, SWBT has repeatedly demonstrated that it has the capability, if it properly follows its procedures, to meet or even substantially beat this interval. There is thus no reason not to count outages of more than 30 minutes as outages.

85. Nevertheless, excluding outages of less than 60 minutes does not materially affect the assessment of SBC's performance. When SWBT causes an outage, it tends to be a long one. Of the XXX outages that the PPIG concluded were caused by SWBT on the XXX FDT orders between December and February, only XXX of these lasted fewer than 60 minutes.²⁸ Thus, if these were excluded from the calculation of outages, SWBT's outage rate for the three-month period would decline only slightly, from 20.8 percent to 19.3 percent. See FDT Outages Chart (Attachment 12 hereto).

e. Outages Captured As Trouble Reports Should Be Included To Make The PPIG Data Comparable To That In The BA-NY Order.

86. If the TPUC and this Commission are interested in refinements to the reconciled data that make the comparison to the BA-NY Order more meaningful, an important step would be to include outages that would have been captured in the BA-NY proceeding but were excluded in the PPIG process. In particular, the PPIG did not count as outages those provisioning problems which were captured as trouble reports, while the reconciled data

²⁸ December order XXX , January order XXX , and February orders XXX and XXX .

generated by the NYPSC for BA-NY included those as outages.²⁹ If this refinement were made, a true comparison would be possible, and SWBT's performance would look even worse.

87. In the Bell Atlantic-New York Section 271 proceeding, the NYPSC Staff conducted a review of hot cut loop outages and included as part of that review orders that were either early cuts or I-codes (hot cut provisioning problems reported more than one hour after completion of the hot cut). BA-NY Order, ¶ 302. The NYPSC Staff's outages review considered whether a BA-NY provisioning error was responsible for a customer's service outage during the loop cutover. See Rubino Aff., ¶¶ 12-13. The NYPSC Staff reviewed the orders for two separate provisioning problems causing outages: (1) an early cut by BA-NY prior to the frame due time and/or (2) a defective cut by BA-NY causing a customer outage. BA-NY Order, ¶ 302 n.959. These defective cuts in turn included two separate types of errors reported separately in the NYPSC's metric reporting system: (1) defective cuts or loss of service reported within one hour of the completion of the loop cutover, which together with the early cuts were counted in the NYPSC's metric system as a "missed appointment" under metric PR4-02, and (2) defective cuts or loss of service reported later than one hour after the completion of the loop cutover, which were reported as an "installation trouble" (or "I-code") under PR6-02. Id.

88. The NYPSC Staff's outages review found that 66 AT&T orders resulted in outages that were the result of BA-NY provisioning errors. The NYPSC Staff exhibits setting forth these results show on their face that both early cuts and I-Codes were included in the set of orders reviewed by the NYPSC Staff. Exhibit 6 to the Rubino Affidavit is a listing of the August orders that AT&T claimed were outages and includes in the second to last column the NYPSC

²⁹ The same outage could be captured as a provisioning problem under a PM, a defective cut (not currently captured by SWBT's PMs), or a trouble report, depending on when reported, and whether or not the order was closed. (Once an order has been closed, problems will show up as a trouble report.)

Staff's determination whether a BA-NY provisioning error was responsible for the outage. The final column of Exhibit 6 lists the metric scoring for each order, which reflects the results of separate reconciliations conducted by AT&T, BA-NY, and the NYPSC Staff.³⁰ As Exhibit 6 makes clear, several of the outages resulting from BA-NY provisioning errors (noted by "Y" in the second to last column) are listed in the metric scoring column as "MET/I-code."³¹ In addition, a number of the outages that are listed for metric scoring purposes as a "Miss" have "early cut" identified as the issue giving rise to the outage.³²

89. Exhibit 6 is limited to August orders, but the Table included as Attachment 13 hereto lists the XXX orders that the NYPSC found to be caused by BA-NY provisioning errors,³³ the scoring of those orders based on the prior reconciliations, and the source of the scoring information. This Table demonstrates that both early cuts and I-Codes were included in the outages analysis conducted by the NYPSC Staff.

90. Thus, to make the comparison to the BA-NY Order, SWBT-caused outages captured as trouble reports should be included as outages. For December 1999, for example,

³⁰ These reconciliations included the review of June 21-July 16 orders set forth in the Letter/Ruling Accepting Staff Analysis and Closing the Technical Conference Process (Aug. 16, 1999) BA-NY Section 271 Application, Appendix C to Brief Attachment C, Tab 925 ("8/16 AT&T/BA Loop Recon."); the reconciliation of July AT&T orders, set forth at Rubino Aff., Exhibit 3; and the reconciliation of August AT&T orders, set forth at Rubino Aff., Exhibit 4. In these reconciliations, if BA-NY and AT&T agreed on the metric scoring of an order, then that scoring was used, and the NYPSC Staff did not review the order as part of the reconciliation process. If AT&T and BA-NY disagreed on the metric scoring, then the NYPSC Staff reviewed the supporting documentation and made a metric scoring determination. As the attached Table shows, AT&T and BA-NY agreed on the metric scoring in many instances.

³¹ E.g., XXX , XXX , XXX , XXX , and XXX .

³² E.g., XXX , XXX , XXX , XXX , XXX , XXX .

³³ The source of this information is Exhibit 5 of the Rubino Affidavit, which lists all orders for the June-August period that the NYPSC Staff reviewed.

there were XXX CHC orders with SWBT-caused outages reflected in the I-7 data³⁴ which were raised as outages in the PPIG Work Group but not counted as outages because trouble reports had been opened on them.³⁵ If at least these XXX orders were added to the existing reconciled CHC outage data for December, SWBT's CHC outage rate would have been 9.1 percent (XXX out of XXX) rather than 3.8 percent (XXX out of XXX), and its overall outage rate for the month would have been 12.1 percent instead of 8.2 percent. Were this calculation to be made across the three months of data on which SWBT's application is based, and expanded to include both CHC and FDT, SWBT's already bad performance on outages would be seen to be far worse. Thus, the most appropriate refinement to the reconciled data would only make it more obvious that SWBT had failed to meet the minimally acceptable standards established in the BA-NY Order.

B. The TPUC Also Overstates SWBT's On-Time Performance

91. The TPUC's analysis of SWBT's on-time performance also is flawed. The TPUC focuses exclusively on SWBT's reported performance for CHC cutovers under PM 114.1. This is an error, for two reasons.

92. First, the TPUC fails to acknowledge that PM 114.1, as currently defined, has a gap: it does not measure the time it takes for the LOC technician to call the CLEC and tell the CLEC that SWBT has completed its work on the cutover. This is a critical step in the CHC provisioning process, because the CLEC does not activate the customer's switch translations

³⁴ Calculated by AT&T from SWBT's I-30 raw data. See DeYoung/Van de Water Supp. Decl., ¶¶67-68 and nn. 25 and 26.

³⁵ These XXX do not represent the entire universe of outages in trouble reports, only the ones that happened to be raised in the PPIG process. AT&T has recently found out that XXX of these XXX were not recorded under PM59 (trouble reports) after they were pushed out of the PPIG, and is currently taking that up with SWBT.

until it receives the “all-done” call from SWBT. Despite the fact that both AT&T and DOJ have repeatedly criticized PM 114.1 on this ground, and despite the fact that SWBT’s proposed revisions to PM 114.1 would cure this problem, the TPUC simply sets forth the results for PM 114.1 without acknowledgement of the issue. The TPUC thus continues to overlook the fact that PM 114.1 does not measure all of the steps that SWBT needs to take to finish the provisioning of a CHC hot cut. The reconciliation shows that this error affected at least 31 of AT&T’s orders during the December – February period at issue, and required in each case that SWBT change the performance interval that it had previously reported for the lines in that order, and that on those orders with gaps, the duration of the gap lasted in excess of 20 minutes in both December and February. See Notification Gap Calculations (Attachment 14 hereto).³⁶

93. Second, and equally important, PM 114.1 is only one measure of on-time performance. Bell Atlantic’s on-time performance included both prolonged and early cuts. BA-NY Order ¶ 296 n.946. As the FCC observed in the BA-NY Order (¶ 301 n. 959) premature or “early” cuts also are cutovers that do not occur on time. Thus, the New York performance measures (PR 4-06) on which the FCC relied to evaluate Bell Atlantic’s on-time performance expressly included *both* early cuts *and* prolonged cutovers. See id., ¶293 & n..932, 933; see also BA-NY Measure PR-4-06 (Attachment 15 hereto). Not surprisingly, even SWBT’s witnesses concede the relevance of early cuts to on-time performance; see Conway/Dysart Supp. Aff. ¶¶ 8, 9, 12 (discussing results under both PM 114.1 and PM 114 as relevant to on-time performance). By looking only at prolonged cutovers, and ignoring early cutovers, the TPUC has (just as it did

³⁶ SWBT tries to minimize this problem by averaging the gap over the entire number of orders, rather than over the number of orders in which there was a gap. Such a procedure makes no more sense here than it would in the case of outage durations—if durations were averaged over all orders instead of over all the orders that had outages, the average outage duration would look rather small, despite the fact that *of the orders which had outages*, the average duration was quite long.

with outages) ignored one important part of the overall picture of on-time performance that was considered in the BA-NY Order. Once again, the TPUC purports to apply a BA-NY standard (the 90 percent on-time standard) only to one subset of performance that the BA-NY Order considered relevant.

94. The TPUC does not offer any facts or analysis for its decision not to include SWBT's early cuts (i.e., PM 114) in its analysis of SWBT's on-time performance. Perhaps its concern was to avoid double-counting. But because the TPUC also appears to advocate that early cuts not be counted as outages (hence its insistence that AT&T's early cuts be backed out of the reconciled data), the TPUC's approach does not result even in "single-counting" of early cuts. Instead, the TPUC apparently favors leaving early cuts unaccounted for in either outages or on-time performance. The TPUC thus fails not only to explain its exclusion of early cuts from on-time performance, but to provide any coherent analysis for how early cuts should be counted.

95. Nevertheless, one point is clear: to compare SWBT's on-time performance with Bell Atlantic's performance, either early cuts must be included, or the performance standard must be raised. In the BA-NY Order, the 90% on-time performance level that Bell Atlantic was found to have achieved took into account both Bell Atlantic's early cuts (the equivalent of PM 114) and its prolonged cutovers (the equivalent of PM 114.1, if disaggregated). Thus, if the TPUC were to insist that SWBT's on-time performance be measured exclusively on the basis of prolonged cutovers, then a fair comparison to Bell Atlantic would require that a higher standard of performance than 90% be set as well, to reflect the fact that only one aspect of SWBT's on-time performance is being measured.

96. Given these overarching errors, the PM 114.1 data that the TPUC exclusively relies upon does not demonstrate on-time performance. First, assuming the data are valid,³⁷ they show – on their face – that SWBT has not demonstrated on-time performance equivalent to Bell Atlantic’s on-time performance for orders involving 10 or fewer loops.³⁸ For the three months combined, the TPUC’s data show that SWBT was late on 10.1% of the loops it cut over, and was early on 4.45% of the loops it cut over, for a total on-time percentage of 85.47%. See TPUC Comments 16, 18. This preliminary figure already is significantly less than the 90% on time percentage that Bell Atlantic achieved.

97. Second, this figure of 85.47% likely overstates SWBT’s performance as compared to Bell Atlantic’s. The majority of the loops reported in the new “all-CLEC” data have not been reconciled with the affected CLEC. As a result, those data have not been corrected for the under-reporting that AT&T found in its reconciliation with SWBT. Specifically, the data on PM 114.1 have not been corrected for the “gap” problem that, as noted above, changed the reported interval on at least XXX of AT&T’s orders. Similarly, the data on PM 114 have not been corrected for the significant under-reporting of premature disconnects that AT&T also found in its reconciliation. See DeYoung/Van De Water Supp. Aff. ¶ 86 (discussing how SWBT’s own WFA logs or outage desk records contained evidence of a number of

³⁷ AT&T cannot confirm the validity of the TPUC’s summaries, because neither SWBT nor the TPUC has provided interested parties with the background data needed to confirm the accuracy of the TPUC’s newly reported “All-CLEC” Data that purports to combined the reconciled data from certain CLECs with SWBT’s self-reported data with regard to the rest.

³⁸ Although the TPUC also presents the PM 114.1 data on a two-hour interval for orders of up to 24 loops, even the TPUC seems implicitly to realize the irrelevance of that particular measure, and notes that SWBT has come close to meeting the TPUC’s benchmark only in one of the three months. TPUC Comments at 14-15. In any case, because the vast majority of CLEC orders are for fewer than 10 loops, the use of a two-hour interval designed for orders of up to 24 loops is obviously irrational and arbitrary, and the TPUC does not seriously contend otherwise. See DeYoung/Van de Water Supp. Aff. ¶¶ 60; AT&T Supp. Comments at 35-36.

premature disconnects on AT&T orders between December and February that SWBT had overlooked when it prepared its manual summary of premature disconnects for its performance measure personnel).

98. These errors thus raise significant doubt about the accuracy of SWBT's reported data on *each* on the two performance measurements relevant to on-time performance. (SWBT's frequent restatements of data during its first application only underscore this doubt). Neither SWBT nor the TPUC has proven that these errors are not systemic problems that would affect all CLECs; to the contrary, the nature of the problems is such that there is no reason to conclude that they would be unique to AT&T. See, e.g. Krabill Aff., ¶¶5-8 (discussing Dec-Jan data); Koch/Smith Aff., ¶16 (discussing April data); DeYoung/Van de Water Supp. Decl., ¶¶53-54, 64 (discussing SWBT under-reporting). Because SWBT's on-time data for all CLECs does not account for either of these errors, the already too-low figure of 85.4 percent on-time that SWBT largely self-reports must be deemed to significantly overstate SWBT's actual level of on-time performance. It is therefore clear that SWBT's on-time performance does not meet the minimally acceptable level approved in the BA-NY Order.

C. The TPUC Ignores Its Own Requirement That SWBT Demonstrate Parity Performance On Trouble Reports, And Repeats Without Inquiry Or Justification SWBT's Confusing And Idiosyncratic I-10 Data

99. The TPUC notes (p.32) almost off-handedly SWBT's "non-compliant" performance on PM 59, the TPUC's measure of trouble reports after installation. Rather than take SWBT to task, the TPUC first applauds SWBT because "the trend shows that performance is improving" (*id.*). But the reality is plain: from December through March, SWBT was never in compliance with the parity standard of PM 59. The TPUC then offers excuses for SWBT's failures, suggesting—without looking at any supporting evidence—that SWBT might have done better if the business rules for PM 59 allowed the exclusion of trouble reports where, after

investigation, no trouble was found, or where trouble may have resulted from a CLEC's non-standard use of xDSL capable loops. Id.

100. The TPUC's purported interest in having such a gloss on the Trouble Report data is extraordinary given that AT&T submitted precisely the information that the TPUC speculates might be useful. Specifically, both in its initial UNE-Loop Declaration (at ¶124) and its supplemental DeYoung/Van de Water Declaration (at ¶67), AT&T set forth the data that SWBT itself reported for troubles on AT&T's lines, which do not include xDSL loops, and which did not include lines where no trouble was found. Just as significantly, AT&T provided that data on the basis of reports filed within seven days of installation, in a genuine effort to, in the words of the TPUC (p.18), "assist the FCC in making a better comparison to Bell Atlantic's performance," which had been assessed on the basis of a seven-day period. Those data showed that SWBT's provisioning resulted in troubles on 2 or more percent of lines each month from December to February, with February the worst month at 4 percent. See DeYoung/Van de Water Supp. Aff., ¶¶67-73. Notably, neither the TPUC nor SWBT has ever challenged the data (which is SWBT's) or the methodology (which is plainly correct—see UNE-Loop Decl., ¶124 and nn. 78 and 79). The TPUC's disregard of its own Performance Measure, together with its peculiar reliance on SWBT's idiosyncratic invention of an I-10 measure rather than data developed consistent with the Commission's BA-NY Order, reflects the remarkable degree to which the TPUC has simply ignored the relevant, probative evidence before it that is inconsistent with its result. Because the information the TPUC ignores is part of the record, the Commission need not rely on the TPUC's incomplete evaluation, and can determine for itself that SWBT has not met either the Texas Performance Measure parity requirement or the BA-NY Order standard for minimally acceptable performance.

101. Indeed, the latest statewide experience further confirms the inadequacy of SWBT's performance. The March Y-30 data on trouble reports for all CLECs shows a 5.3 percent rate, while that for SWBT's own retail operations is 3.3 percent, a serious statewide parity violation.

II. THE RESPONSES BY TPUC AND SWBT FAIL TO ADDRESS COMPREHENSIVELY THE PROBLEMS WITH THE LACK OF ACCURATE, MECHANIZED DATA GATHERING AND REPORTING PROCESSES AND IMPROPERLY DEFINED PERFORMANCE MEASURES.

102. Despite substantial evidence of fundamental problems with SWBT's data gathering and reporting, the TPUC omits any mention of the serious the need for revisions and reforms to existing processes and procedures. Even the TPUC has acknowledged the need to implement some of the action items that AT&T has recommended to fix SWBT's data-reporting problems—but the necessary changes have yet to be made, and likely will not be if the TPUC does not insist upon them. The TPUC and SWBT also misrepresent the purpose and significance of the Performance Measure revisions currently being discussed. Because the prospects for future nondiscriminatory behavior by SWBT hinge on full and complete correction of these identified problems, the Commission must require such corrective action before 271 compliance can be found.

A. There Has Been No Adequate Responses To The Action Items Generated Out Of the Learnings From the Reconciliation Experience

103. The reconciliation experience demonstrated many areas where SWBT's processes require significant improvement. See DeYoung/Van de Water Supp. Decl., ¶¶79-95. In an effort to respond to the TPUC's request for a summary of the data reconciliation that they had ordered, AT&T prepared and presented an action item list at the TPUC's April 4, 2000 CLEC Workshop. See DeYoung/Van de Water Supp. Decl., ¶97 and Attachment H thereto. The TPUC's April 26, 2000 ignores that list. However, SWBT has now provided a written response. See SWBT's

Response to AT&T's Letter to ALJ Regarding the UNE-Loop Coordinating Cutover Process, (Attachment 2 hereto). Its responses contain many inadequacies, including many responses that are essentially little more than promises to do better in the future. SWBT's responses to some of the key issues are as follows:

- Despite the frequency with which premature disconnects appear in the workforce administration database or outage desk records but not in the PM 114 reports, SWBT's response is not to mechanize the data collection process, but to remind its personnel to do their jobs properly, and to have Quality and Training Managers occasionally double check their work. See id., p.6.
- SWBT's "responds" to the fact that it never informed CLECs about the scope and impact of the critical RCMAC/SOAC problem affecting CHC as well as FDT orders by observing that it "will be happy to discuss with CLECs the best vehicle to communicate these rare occurrences." Id. at p.7. Of course, even if the RCMAC/SOAC problem itself was a one-time event (we hope), problems of one sort or another have been endemic. As the 911 database problem illustrates, SWBT cannot rely on CLECs to tell SWBT about problems—by the time CLECs are aware, it is too late. SWBT's failure to communicate is indicative of a corporate culture insensitive to its Section 271 obligations toward CLECs. SWBT still lacks even a concrete proposal to fix this basic problem.
- Though plagued by instances in which CLEC's FDT orders are mistakenly treated as CHC by the SWBT LSC, SWBT first responds by saying that LSC service representatives "were covered on the proper handling" of orders, and that "[f]lashes were sent out as training on this order process." It then suggests that the burden somehow ought to be on the CLECs to police SWBT's internal communications by checking the FOC against the LSC and notifying the LSC of any discrepancy. Id. at p.8. CLECs cannot possibly take on the task of managing SWBT's personnel.
- SWBT appears to have no response at all to the high number of outages attributable to wiring problems and the associated failure of its personnel to discover these problems as they are supposed to during the Due Date –1 Pre-testing Process. Instead of proposing a response, SWBT merely restates the problem, explaining what the pre-testing procedures are and why they are important, but not addressing the root causes of the wiring problems, nor addressing why its pre-testing routines are not functioning to detect the problems. Id. at p.10.
- SWBT's pre-testing process is also failing to provide advance notice of hot cut orders for customers serviced by IDLCs, an especially critical problem given SWBT's plans to greatly expand its IDLC facilities through Project

Pronto. SWBT again fails to really respond to the problem, saying only that it has trained its personnel and issued more “flashes,” and putting off the proposed resolution by suggesting it be raised in the CLEC user forum. *Id.* at p.11. Furthermore, AT&T is not aware of any “defined and documented” process for handling IDLC orders. AT&T does intend to propose to the CLEC users’ forum the changes it is suggesting; the goal for all involved is to be sure that the process is driving the definition of the Performance Measures, and not the other way around.

- Despite the importance SWBT has put on IDLC facilities, SWBT treats IDLC orders as neither CHC nor FDT, and its provisioning performance on these orders is not reflected on any Performance Measure. SWBT’s claim that it was agreed at the 6 month review to exclude these from PMs 114, 114.1, and the new 115 and treat them as “new” loops misstates the nature of the agreement. AT&T and other CLECs agreed to document the fact that IDLC orders *are currently being excluded* from the Performance Measures and from the monthly denominators. There was no agreement that this increasingly important facet of the market *should be excluded*; as noted above, the AT&T proposal to capture IDLC provisioning, though not a topic that could be covered in the performance measures workshop, is going to be taken to the CLEC users’ forum.

B. The New Performance Measure 115, While An Improvement, Still Must Be Defined And Interpreted Carefully To Understand The True Quality Of SWBT’s Provisioning Performance

104. A new Performance Measure 115, designed to measure trouble reports before noon of the next business day after a cutover, is currently under consideration in Texas. This new measure should have real value, given the fact that the Texas process currently lacks any measure for defective provisioning of hot cut loops. However, the Commission should not be misled by the TPUC’s confusing misrepresentation of the new Performance Measure 115 as an outage measure corresponding to the standards set in the BA-NY Order. The TPUC’s evaluation says:

The current performance measurements do not capture all outage data. This problem is being resolved in the six-month review process and will result in *a measure to accurately capture all outage data*. The proposed new PM 115 will measure the percent of CHC/FDT circuits for which the CLEC submits a trouble report on or before noon on the next business day after conversion. All

the parties agree that this new measure captures the outages that result from defective loops.

TPUC Evaluation, p. 16 (emphasis added).

105. SWBT makes the same misrepresentation, describing the new PM 115 as “provid[ing] the ‘outages on conversion’ measurement that AT&T and other CLECs have indicated is important to them.” Benchmarks Brief, p.4. SWBT concedes elsewhere in the same brief (p.10) that the new PTR (percent trouble reports) performance measure “is not precisely the same as the *Bell Atlantic New York Order*’s analysis of provisioning-related outages.” Nevertheless, SWBT then goes on to argue that it should be allowed 5 percent outages on this PM 115. *Id.* The problem, of course, is that PM 115 is not defined to capture all outages, but only those outages resulting from defective cutovers. If SWBT were allowed to cause up to 5 percent of these types of outages alone, the that amount, when combined with outages allowed under PMs 114 and 114.1 for premature and prolonged cutovers, would lead to a total outage rate far in excess of that the Commission found minimally acceptable in the BA-NY Order.

106. Thus, while the new measure does capture “outages that result from defective loops,” it is most definitely *not* a measure which will “accurately capture all outage data.” As the Commission noted in it BA-NY Order, outages result from premature cuts and prolonged cuts just as much as from defective cuts. One of the principle reasons that AT&T reluctantly acceded on an interim basis to SWBT’s desire to measure premature cuts and prolonged cuts on a line basis was specifically because those two data points need to be added to the defective cut data in order to accurately capture all outage data, and SWBT insisted that, for technical reasons, it could not mechanize its data collection and reporting on the new PM 115 unless it reported on a line basis. As noted in Section I.A.2.a. above, it has never been the case that outages should be measured by defective cuts alone.


107. Finally, SWBT has grossly distorted AT&T's positions in the debate over lines vs. orders as a basis of measurement. As noted above, AT&T has temporarily agreed to line-based measurement of defective cuts to enable SWBT to mechanize its data collection and therefore overcome its chronic under-reporting of outages. In a recent brief filed with the TPUC, however, SWBT tries to suggest that it was AT&T that wanted a loop-based measure for PM 115 and that SWBT was graciously complying. See Brief on Benchmarks, pp.4-5, 8 (Attachment 16 hereto) (claiming that AT&T has a "preference" for measuring by loops "which SWBT did not oppose"). No independent observer who attended the CLEC workshops or reviewed the record in this case could find this credible.

108. What SWBT feels there is to gain from such obvious rhetorical gimmickry is unclear, but the facts remain what they have always been—SWBT and the TPUC have urged replacing line-based measurements with order-based percentage standards even though jointly reconciled order-based data are readily available, while AT&T has advocated order-based measures consistent with those in the BA-NY Order. AT&T's recent concessions represent only a desire to get data on premature disconnects and prolonged cutovers that are consistent with data on defective cuts, given that SWBT has designed its trouble report processes in such a way that (it claims) order-based data cannot be mechanically generated. Ultimately, SWBT needs to develop the ability to provide mechanized reports of outages and on-time performance on an order basis as well.

FCC DOCKET CC NO. 00-65

I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on May 17, 2000



FCC DOCKET CC NO. 00-65

I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on May __, 2000

Mark D. Vande Walle